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1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com

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From: Name: Jeffrey P. Kushan

Voice: 202-736-8000

To: Name: U.S. Patent and Trademark Office
Company: U.S. Patent and Trademark Office
Facsimile#: 7038729306
Voice Phone:
Subject: U.S. Serial No. 09/020,746 - Communication

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Date: 02/14/2005

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Fax no.: (703) 872-9306

From: Jeffrey P. Kushan
Tel. (202) 736-8000

Date: February 14, 2005

Re:

Serial No.: 09/020,746

Group Art Unit: 1647

Confirmation No.:

Examiner: C. Kaufman

Filed: February 9, 1998

Applicant: Avi J. Ashkenazi

For: Apo-2 Receptor Antibody

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

I CERTIFY THAT THE FOLLOWING DOCUMENTS ARE BEING TRANSMITTED TO THE USPTO AT FAX NUMBER (703) 872-9306 ON THE DATE SHOWN:

- Communication (2 pages)
SIGNATUREYvonne T. Reyes
PRINTED NAMEFeb. 14, 2005
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Patent Docket P1101P1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Avi J. Ashkenazi Serial No.: 09/020,746 Filed: February 9, 1998 For: Apo-2 Receptor Antibody	Group Art Unit: 1647 Examiner: C. Kaufman
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COMMUNICATION

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The claims of the current application are allowable. However, prosecution of the instant application has been suspended due to a possible interference since May 1, 2003. *See, e.g.*, Paper Nos. 39, 0104, 1004. Based on public information available on the PTO PAIR database, Applicant understands that prosecution of the instant application has been suspended in light of co-pending U.S.S.N. 09/565,009 (the '009 application).

Applicant has recently become aware, based on public information provided via the PTO PAIR database, that the Office mailed a Notice of Allowance for the '009 application on 1/21/05. Because information pertaining to the allowance and/or issuance of the '009 application may be of relevance to the prosecution of the instant application, Applicant believes it to be appropriate to bring this information to the Examiner's attention.

Applicant also observes that in at least two previous communications to the Office during the prosecution of the instant application (e.g., the Supplemental Responses filed on 1/22/03 and 2/28/03), Applicant provided information and evidence that the '009 application (or a patent that

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Ashkenazi

issues therefrom) cannot be prior art to the instant application and cannot support claims to subject matter presently claimed in this application. For example, Applicant submitted a §1.131 declaration on 2/28/03 that antedates the earliest filing date claimed by the '009 application, i.e., March 17, 1997. Because of this, Applicant believes that any patent that could or may issue from the '009 application would not be valid.

* * * * *

Applicant respectfully requests that the Office enter this Communication into the file wrapper. Applicant respectfully requests that the Examiner or her supervisor contact the undersigned prior to taking any further action in this application.

Respectfully submitted,
for GENENTECH, INC.



Jeffrey P. Kushan
Registration No. 43,401

Date: February 14, 2005